EUROPEAN COMMISSION

Brussels, 12/05/2023
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REGULATORY SCRUTINY BOARD OPINION

Proposal for a COUNCIL DIRECTIVE
on Faster and Safer Relief of Excess Withholding Taxes

{COM(2023) 324 final }
{SWD(2023) 215 final }
{SWD(2023) 216 final }
{SWD(2023) 217 final }

EUROPEAN COMMISSION
REGULATORY SCRUTINY BOARD

Brussels,
RSB

Opinion

Title: Impact assessment for the 'New EU system for the avoidance of double taxation and prevention of tax abuse in the field of withholding taxes (WHT)

Overall 2nd opinion: POSITIVE WITH RESERVATIONS

(A) Policy context

In the EU, investors may be obliged to pay tax on the income they receive from the holding of securities (dividends and interests) twice, first in the source country (withholding tax, WHT) and then in the country of residence of the investor (income tax). To avoid this double taxation, many countries have agreed to share tax rights by signing double tax treaties (DTTs), whereby non-resident investors may be entitled to a lower rate of withholding tax or to an exemption in the source country.

This reduction or exemption of WHT may be granted either as a relief at source or through a refund procedure. However, the WHT refund procedures are often complicated and vary considerably among Member States. As a result, investors incur high costs, receive late refunds or even forego the right to refund altogether. This discourages cross-border investment and represents a barrier to the free movement of capital. In addition, there has been an abusive utilisation of WHT refund procedures.

This impact assessment explores ways of making WHT procedures in the EU more efficient and less prone to fraud, to ensure fair taxation and support cross-border investment.

(B) Summary of findings

The Board notes the improvents made to the draft report.

However, the report still contains significant shortcomings. The Board gives a positive opinion with reservations because it expects the DG to rectify the following aspects:

(1) The report does not present the available options clearly enough.

(2) The fact that the preferred option gives Member States a choice is not adequately reflected in the impact analysis and comparison of options.

(3) The report does not provide sufficient information on costs and cost savings in scope of the One In, One Out approach.

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(C) What to improve

(1) While the revised report introduces a new option providing Member States with the choice to implement either a Quick Refund System or Relief at Source, it no longer presents the Quick Refund System as a stand alone option along with the Relief at Source and other options. The report should either justify this exclusion or reintroduce the Quick Refund System in the set of self-standing options considered, also in view that this would facilitate the analysis and comparison of options (see below). The report should also clarify what is meant by the notion of a Quick Refund System 'within a set timeframe'.

(2) The analysis of the preferred option and comparison of options should be revised to reflect the fact that the preferred option gives Member States a choice. The report should be more specific – supported by evidence - about the expected choices made by Member States and present the implications (in terms of costs and benefits) of selecting one or the other. If there is uncertainty about the likely choices, the report should provide ranges of expected impacts.

(3) The report should be more specific about the differences in the expected costs and benefits of the options. It should improve the presentation of the costs and benefits, particularly for financial intermediaries and tax authorities, including those that are not quantified, so that it is clear what the differences between the options are.

(4) The scores in the comparison of options should be fully in line with the analysis. If the performance of the options cannot be fully compared in quantitative terms (scores), the report should present a well justified comparison of options in qualitative terms.

(5) The report should justify why the costs for financial intermediaries related to reporting obligations are not considered in scope of the One In, One Out approach. It should further explain how the cost savings for investors of EUR 730 million were estimated. The analysis should always clearly differentiate between one-off and recurrent costs.

The Board notes the estimated costs and benefits of the preferred option(s) in this initiative, as summarised in the attached quantification tables.

(D) Conclusion

The DG may proceed with the initiative.

The DG must revise the report in accordance with the Board's findings before launching the interservice consultation.

If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.

Full title	Impact assessment for the 'New EU system for the avoidance of double taxation and prevention of tax abuse in the field of withholding taxes (WHT) initiative', so-called FASTER (Fasttrack Assured and Safer Tax Excess Refunds).
Reference number	PLAN/2021/ 10794
Submitted to RSB on	20 March 2023
Date of RSB meeting	Written procedure

ANNEX: Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

I. Overview of Benefits (total for all provisions) – Preferred Option 3 – Quick Refund System and Relief at Source		
Description	***Amount***	***Comments***
Direct benefits		
Investors - Decrease in foregone WHT reclaims due to more efficient refund procedures	EUR 5,17 billion on an annual basis	Investors will be the main beneficiary with less foregone WHT refunds and prompter WHT refunds.
Tax administrations – standard liability allocation/sanctions, and measures to prevent tax abuse like Cum/Ex and Cum/Cum.	No quantification available. Reporting requirements of financial intermediaries and WHT agents/securities issuers to the tax authority of the Member State of the investment will help detect/prevent tax abuse and achieve swifter WHT procedures. Better resources allocation. Ensuring enforceability of liability rules on financial intermediaries will benefit tax recovery/cross-border cooperation.	Tax administrations will benefit from information reporting which they can use with their national systems for risk assessment purposes. Benefits will depend on whether Member States have national WHT anti-abuse rules already in place, and how adequate Member States national systems are to utilise such data.
Financial intermediaries	Decrease in recurring costs for financial intermediaries due to streamlined standard refund procedures, in particular relating to the digitalisation aspects of the initiative like the use of the E-TRC. The recurring cost savings are expected to be EUR 13.5 million for financial intermediaries in the EU. Increase in investment as described in the macro-economic indicator for capital will benefit financial intermediaries that will increase its business/turnover.	
Indirect benefits		
Member States – macro-economic impact	Increase in GDP for the EU of 0.025%. Option 3 will also have a positive impact on other macro-economic indicators like capital, wages, and employment.	Tax revenues received by Member States would decrease due to less foregone WHT refunds for investors
Administrative cost savings related to the 'one in, one out' approach*		
(direct/indirect)	Decrease in costs for investors of EUR 730 million due to costs associated with the paperwork decreasing and the streamlining of different requirements per Member State for the process.	

II. Overview of costs – Preferred option- Option 3 Combination Quick Refund System and Relief at Source							
		Citizens/Consumers		**Financial intermediaries and WHT agents/securities issuers**		**Tax Administrations**	
		One-off	**Recurrent**	**One-off**	**Recurrent**	**One-off**	**Recurrent**
Implementing an E-TRC	Direct administrative costs					EU27 Development costs for	Depending on the option chosen for

						setting up an E-TRC which uses data publication/ data querying: Euros 27-54 million. EU-27 Development costs for setting up a verifiable credential/electronic signature E-TRC: EUREU-27 Euros 4.9-8.2 million	the E-TRC, EU27 recurrent costs for an E-TRC are expected to be between EUR 972.000 and 10.8 million.
	Direct adjustment costs						
	Direct regulatory fees and charges						
	Direct enforcement costs						
	Indirect costs						
Standard refund procedure	Direct administrative costs			Current WHT refund submission systems would need to be adapted to meet new requirements, including digitalisation. The development costs for financial intermediaries have been estimated at EUR 21.7 million for financial intermediaries in the EU.	Standard refund procedures will entail recurrent cost savings for financial intermediaries in the EU and as such are included in the table above for benefits.		
Reporting requirements	Direct administrative costs			Current reporting systems of financial intermediaries to the tax authorities	Recurrent annual costs for financial intermediaries are expected to be EUR 13.5 million.	Setting up reporting system to receive data would incur EUR 1.4 million for	Recurrent costs for tax administrations of receiving data from financial

				would need to be adjusted to reflect the new requirements. Development cost costs for reporting have been estimated at EUR 54.2 million for financial intermediaries in the EU.		implementation costs. Therefore, EUR costs are estimated at EUR 18.2 million in relation to the 13 Member States that would need to implement the system.	intermediaries are expected to be 20% of implementation costs (that is EUR 3.5 million per annum)
	Direct adjustment costs						
	Direct regulatory fees and charges						
	Direct enforcement costs						
	Indirect costs						
Standard due diligence, liability allocation and multiple requests	Direct administrative costs			Minimal costs expected for financial intermediaries from introducing standard due diligence, standard liability allocation and multiple requests on a bulk basis		Minimal costs expected for tax administrations from introducing standard due diligence, standard liability allocation and multiple requests on a bulk basis	
	Direct adjustment costs						
	Direct regulatory fees and charges						
	Direct enforcement costs						
	Indirect costs						
Costs related to the 'one in, one out' approach							
Total	Direct adjustment costs			Development costs for E-TRC and reporting are estimated to be EUR 75,9 million for financial intermediaries	Recuring costs for financial intermediaries are EUR 13.5 million.		
	Indirect adjustment costs						
	Administrative costs (for offsetting)						

EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB

Opinion

Title: TAXUD - Impact assessment for the 'New EU system for the avoidance of double taxation and prevention of tax abuse in the field of withholding taxes (WHT)

Overall opinion: NEGATIVE

(A) Policy context

In the EU, investors may be obliged to pay tax on the income they receive from the holding of securities (dividends and interests) twice, first in the source country (withholding tax, WHT) and then in the country of residence of the investor (income tax). To avoid this double taxation, many countries have agreed to share tax rights by signing double tax treaties (DTTs), whereby non-resident investors may be entitled to a lower rate of withholding tax or to an exemption in the source country.

This reduction or exemption of WHT may be granted either as a relief at source or through a refund procedure. However, the WHT refund procedures are often complicated and vary considerably among Member States. As a result, investors incur high costs, receive late refunds or even forego the right to refund altogether. This discourages cross-border investment and represents a barrier to the free movement of capital. In addition, there has been an abusive utilisation of WHT refund procedures.

This impact assessment explores ways of making WHT procedures in the EU more efficient and less prone to fraud, to ensure fair taxation and support cross-border investment.

(B) Summary of findings

The Board notes the useful additional information provided in advance of the meeting and commitments to make changes to the report.

However, the Board gives a negative opinion, because the report contains the following significant shortcomings:

(1) The report is unclear on the balanced weight of the two specific objectives and how this is carried through the analysis.

(2) The report does not provide a clear description of the content, functioning and complementarity of the options. It does not identify and assess all relevant options upfront.

(3) The report does not provide a clear and complete picture of the costs and benefits of each option. It does not assess the impacts of the preferred combination of options.

(C) What to improve

(1) The report should be clear whether the two specific objectives, i.e. improving the efficiency of WHT procedures and fighting tax abuse, have equal weight. If both are equally important, the assessment and comparison of options should be revised accordingly.

(2) The report should provide a clear description of the content and functioning of the options. It should clarify to what extent the options contain common elements and to what extent they are cumulative or mutually exclusive. It should provide a clear overview of the elements included in each option in a more structured and streamlined way and how each of them interacts with existing procedures in place. In particular, it should provide more information on the common EU digital tax residence certificate (e-TRC) and justify why it is considered as a self-standing option. It should also provide further information on the additional reporting obligations and explain what obligations would a due diligence procedure imply, providing details as regards the content (information to be provided) and the process (how and when will the information be provided).

(3) The report should identify upfront and assess all relevant options. In particular, it should explore an additional policy option introducing improvements in the WHT refund systems while giving Member States the possibility to introduce a relief at source system. This could be done via a combination of existing options or by defining a variant of an existing option. The report should explain why the relief at source option is analysed as a stand-alone option, given that its short- and medium-term feasibility seems questionable. It should refer to the experience in Member States with quick refund systems and how would the time limits be chosen.

(4) The report should provide a clear and comprehensive picture of the costs and benefits of each option, clearly showing the net impacts and Benefit Cost Ratios. It should present more clearly how the costs and benefits were calculated. The impact analysis should cover the assessment of all significant impacts. In particular, the report should elaborate on the expected benefits of introducing an e-TRC and estimate the costs for investors. It should present more clearly the expected costs and benefits for financial intermediaries from the proposed enhanced transparency obligations. It should make an additional effort to reach out to affected businesses and quantify those costs and benefits. If the information available does not allow a robust quantification, this should be explained and justified in the report and the costs and benefits should be assessed qualitatively. The report should clarify whether the SME test was carried out and, if not, why not. It should also present more clearly the expected impacts on Member States, including the impacts on tax revenues and GDP.

(5) The identification of the preferred option should result from the comparison of all relevant options (including combinations thereof) in terms of effectiveness, efficiency and coherence.

(6) The report should quantify, to the extent possible and proportionate, the costs and cost savings that are relevant for the One In, One Out approach. The estimates should be clearly and consistently presented in the main report and annexes.

(7) The report should present more clearly the views of different stakeholder groups with regard to the policy options. It should explain who supports which option.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The DG must revise the report in accordance with the Board's findings and resubmit it for a final RSB opinion.

Full title	Impact assessment for the 'New EU system for the avoidance of double taxation and prevention of tax abuse in the field of withholding taxes (WHT) initiative', so-called FASTER (Fast-track Assured and Safer Tax Excess Refunds).
Reference number	PLAN/2021/ 10794
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